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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER JAMES OWENS,

Defendant and Appellant.

F072556

(Super. Ct. No. VCF284067)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Kathryn Montejano, Judge.

Conness A. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Franson, J. and Peña, J.

INTRODUCTION

Appellant Christopher Owens was convicted of misdemeanor assault, a violation of Penal Code¹ section 240; vandalism in violation of section 594, subdivision (a); two counts of resisting an executive officer in violation of section 69; and battery upon an officer, in violation of section 243, subdivision (b). On appeal, Owens asks this court to independently review the confidential personnel records produced pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We have and affirm.

FACTUAL AND PROCEDURAL SUMMARY

Because the only issue Owens asks this court to address is the ruling on the *Pitchess* motion, we provide an abbreviated summary.

Owens was in an altercation with James Mills and his son, Marc, on May 22, 2013. Mills was driving a manure-spreading machine and his son was in the passenger seat. Owens hit the truck's window with a chain wrapped around his hand; he managed to shatter the window and the chain hit Mills's arm, causing lacerations.

Tulare County Sheriff's Deputy Richard Morley and Sergeant Jerry Mayberry responded to the scene. Mills and his son informed the deputies of the attack. Owens was detained, handcuffed, and placed in the back of a patrol vehicle. Owens began screaming and banging his head against the Plexiglas screen and the vehicle's windows.

To avoid injury to Owens and damage to the patrol car, Mayberry opened the vehicle door and instructed Owens to step out. Owens was ordered to get down on the ground; he resisted. With Morley's assistance, Owens was moved to the rear of the vehicle and placed in a prone position; however, he refused to follow orders and crawled under the patrol vehicle. Owens was pulled from underneath the vehicle and moved to a safe distance.

¹ References to code sections are to the Penal Code unless otherwise specified.

Owens was yelling vulgarities; twisting his body; not following directives of the deputies; and trying to lift his body off the ground. After several minutes, Owens calmed down and complained his wrists hurt. While deputies attempted to loosen the handcuffs, Owens reached back and dug his fingernails into Mayberry's hands. At the time of trial, Mayberry still had scarring on both hands.

An information filed January 17, 2014, charged Owens with multiple offenses. On April 9, 2014, the trial court granted Owens's *Pitchess* motion and conducted an in camera review of the confidential personnel records of Mayberry and Morley. The trial court determined nothing was discoverable.

Owens was convicted of misdemeanor assault in violation of section 240; vandalism in violation of section 594, subdivision (a); two counts of resisting an executive officer in violation of section 69; and battery upon an officer, in violation of section 243, subdivision (b). Owens was sentenced to a total state prison term of two years and eight months.

On September 10, 2015 the trial court granted Owens's motion to vacate the sentence. On October 7, 2015, Owens was resentenced pursuant to section 1170, subdivision (h)(5)(B), to a term of two years and eight months to be served locally, with one year and eight months suspended during which time Owens would be subject to mandatory supervision.

Owens filed a notice of appeal on October 15, 2015.

DISCUSSION

The only issue raised by Owens is to request this court independently review the documents produced in response to his *Pitchess* motion. The Tulare County Superior Court failed to maintain a record of the documents reviewed in camera during the *Pitchess* hearing. Therefore, on this court's own motion by order dated September 12, 2016, the custodian of records of the Tulare County Sheriff's Department was directed to prepare and file under seal copies of all of the documents reviewed by the trial court at

the April 9, 2014 *Pitchess* hearing.² The augmented record was filed with this court on September 29, 2016.

This court has reviewed the documents produced at the *Pitchess* hearing and provided to this court under seal. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.) Our independent review discloses that the trial court correctly determined that none of the records were subject to disclosure. The trial court's determination was not an abuse of discretion. (*Ibid.*)

DISPOSITION

The judgment is affirmed.

² The trial judge is no longer on the bench and is unavailable for recall to hear the matter, therefore, we cannot refer the matter for preparation of a settled statement as recommended in *People v. Mooc* (2001) 26 Cal.4th 1216.